

Application No. 10/649,420

REMARKS

The Applicant provisionally elects Species I, the embodiment of Figures 1-4, for the initial prosecution on the merits. Applicant traverses the designation of species on the ground that Figure 5 is an essential element of Species I. Applicant would like to point out to the Examiner that Figure 5 discloses an element that is part of the invention disclosed in Figures 1-4. Specifically, as previously disclosed in the application (see Brief Description of the Drawings) and now amended to be included in the Detailed Description of the Invention, Fig. 5 is an elevational view of an exemplary embodiment of a gel pack. Therefore, Applicant's election of claims and a species is made based on the belief that the election of Species I is not complete without element 20 which is already disclosed in Figures 1-4 and specifically in Figure 5. Towards this end, the claims readable on Species I include Claims 1-29. Claims 1 and 4-7 are believed to be generic. Upon the allowance of a generic claim, the Applicant requests consideration of claims to additional species.

Applicant further respectfully traverses the requirement for restriction as set forth in the Office Action. The Applicant considers the invention to be defined by Claims 1-29.

Section 121 of the Patent Statute allows a restriction requirement in the event that two independent and distinct inventions are claimed in a single patent application. It is not seen how the two claimed groups set forth by the Examiner are independent. There is a clearly disclosed relationship between the two inventions, and is evident by the requirement for Figure 5 to be part of both specifics identified by the Examiner. Thus, the inventions are dependent.

Furthermore, distinctiveness cannot be based on different fields of search, as the assignment of classes and sub-classes is merely an administrative tool employed by the Patent and Trademark Office to classify patent applications and facilitate the searching of prior art. There is nothing in the Statute that refers to

Application No. 10/649,420

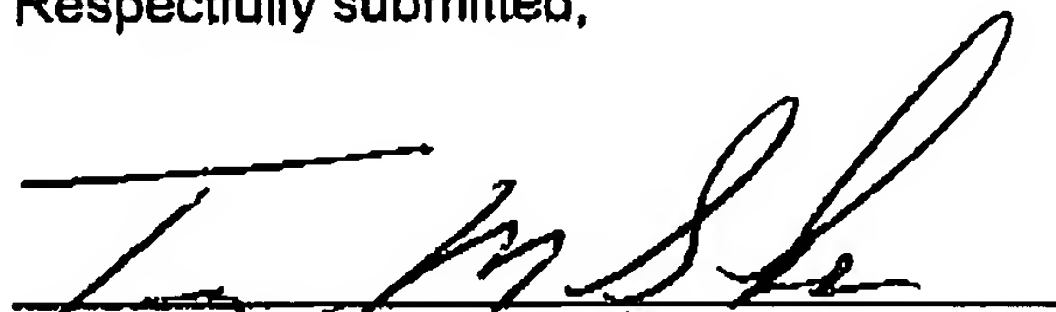
administrative convenience as a basis for a restriction requirement. The search required by Section 131 must be conducted to identify all relevant art, no matter where and how that art is classified.

In any case, to be responsive to the Examiner's restriction requirement and to move the case along for continued examination and issue, the Applicant has elected Species I as set forth above. The Applicant reserves the right to file a divisional application or take other action as appropriate to protect the invention set forth in the withdrawn claims.

It is respectfully requested, however, that the restriction requirement be withdrawn and that a complete examination of the application in compliance with Section 131 be performed.

If a telephone conference will assist in clarifying or expediting this Amendment, the Examiner is invited to contact the undersigned at the telephone number below.

Respectfully submitted,




Terry M. Banks
Reg. No. 45,096
Beusse Brownlee Wolter Mora & Maire, P.A.
390 N. Orange Avenue, Suite 2500
Orlando, FL 32801
(407) 926-7707

Application No. 10/649,420

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY that this Response to Restriction Requirement is being FAXED to: U.S. Patent Office at 703-872-9306 on this 3rd day of May, 2005.


Linda Sanders